

DEPARTMENT OF HEALTH

NOTICE OF FINAL RULEMAKING

The Director of the Department of Health, pursuant to the authority set forth in sections 5 and 6 of the District of Columbia Air Pollution Control Act of 1984 ("the Act"), as amended, effective March 15, 1985, D.C. Law 5-165, D.C. Code Sections 6-905 and 6-906 (1999 Supp.) and Mayor's Order 98-44, dated April 10, 1998, hereby gives notice of the adoption of the following amendments to Title 20 of the District of Columbia Municipal Regulations (DCMR). Final action to adopt these rules was taken on . Notice of proposed rulemaking was published in the D.C. Register on March 2, 2001, at 48 DCR 1980. A further change became necessary before the proposed rules were published as final, and the rules were republished as proposed rules with abbreviated notice on April 27, 2001, at 48 DCR 3657. The Mayor submitted the amended rules to the Council for a 45-day review period excluding weekends, holidays, and periods of Council recess, as required by § 6(b) of the Act. The Council approved the rules by emergency resolution entitled "Air Quality Regulations Amendment Emergency Approval Resolution of 2001" (R14-105, effective May 1, 2001). The final rules shall take effect upon publication in the D.C. Register.

The proposed rules amend Chapter 3 to clarify the requirements of the Title V Operating Permit program. The proposed rules also amend Chapter 10 to establish general provisions and the applicability, permitting, allowance, excess emissions, monitoring, and opt-in provisions for the NO_x Budget Trading Program for State Implementation Plans, pursuant to Part 96 of Title 40 of the Code of Federal Regulations, as a means of mitigating the interstate transport of ozone and nitrogen oxides, an ozone precursor. These regulations are necessary to comply with requirements of the Federal Clean Air Act and will be transmitted to the U.S. Environmental Protection Agency as a revision to the District's State Implementation Plan (SIP). No comments have been received regarding these rules, and only minor punctuation, typographical, and spacing changes have been made to the final rule.

Title 20 DCMR (Environment) (February 1997) is amended as follows:

I. Title 20 Chapter 3 is amended as follows:

A. By amending § 301.1(b)(6) to read as follows:

- (6) In submitting an application for renewal of an operating permit issued under this chapter a source may identify terms and conditions in its previous permit that should remain unchanged and incorporate by reference those portions of its existing permit and the permit application and any permit amendment or modification applications that describe products, processes, operations, and emissions to which those terms and conditions apply. The source shall identify specifically and list which portions of its previous permit or applications are incorporated by reference. In addition, a renewal application shall contain the following:

- (A) Information specified in § 301.3 for those products, processes, operations, and emissions of the following:
 - (i) That are not addressed in the existing permit;
 - (ii) That are subject to applicable requirements that are not addressed in the existing permit; or
 - (iii) That the source seeks permit terms and conditions that differ from those in the existing permit;
- (B) A compliance plan and certification as required in § 301.3(h); and
- (C) A compliance certification, as required by § 301.3(i); and

B. By amending § 301.3(c)(1) to read as follows:

- (1) All emissions of pollutants for which the source is major and all emissions of regulated air pollutants. The permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit. The source shall submit additional information related to the emissions of regulated air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to determine the amount of any permit fees owed under the fee schedule approved pursuant to § 305;

C. By amending § 301.3(g) to read as follows:

- (g) Additional information as determined to be necessary by the Mayor to define alternative operating scenarios identified by the source pursuant to § 302.1(j) or to define permit terms and conditions implementing § 302.8 or § 302.1(k) of this chapter;

D. By amending § 301.3(h)(3)(C) to read as follows:

- (C) A schedule of compliance for sources that are not in compliance with all applicable requirements at the time of permit issuance. The schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the source will be in noncompliance at the time of permit issuance. This compliance schedule shall resemble and be equivalent in stringency to that contained in any judicial consent decree or administrative order to which the source is subject. Any schedule of compliance shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based;

E. By amending § 302.1(k) by adding at the end a new sentence to read as follows:

The terms and conditions for the trading or averaging of emissions shall meet all applicable requirements and the requirements of the operating permits program.

F. By amending § 302.4(e) to read as follows:

(e) A general permit issued under this section shall identify criteria by which sources may qualify for the general permit. After the Mayor has issued a general permit, the source named in the permit may submit a request for coverage under the permit subject to the following conditions:

(1) A request for coverage under a general permit shall identify the source and provide information sufficient to demonstrate that the source meets the general permit qualification criteria and that the source is in compliance with the general permit. The request shall provide any additional information the general permit specifies; and

(2) A final action approving a request for coverage under a general permit shall not be subject to public comment or judicial review;

G. By amending § 303.1(d)(1) and § 303.1(f) by striking the phrase "forty-five (45) days" in each place the phrase appears and inserting the phrase "fifty (50) days" in each place.

H. By amending § 303.3(a) to read as follows:

(a) Applications for permit renewal shall be subject to the same procedural requirements, including those for public participation, affected State comment, and Administrator's review, that apply to initial permit issuance under § 303.1. An application for permit renewal may address only those portions of the permit that require revision, supplementing, or deletion, incorporating the remaining permit terms by reference from the previous permit. The Mayor may similarly, in issuing a draft renewal permit or proposed renewal permit, specify only those portions that will be revised, supplemented, or deleted, incorporating the remaining permit terms by reference;

I. By amending § 303.5(d)(1) to read as follows:

(1) Significant modification procedures shall be used for applications requesting permit modifications that:

(A) Involve a significant change in existing monitoring permit terms or conditions, or constitute a relaxation of reporting or record keeping permit terms or conditions;

(B) Require or change a case-by-case determination of an emission limitation

or other standard, or a source-specific determination for temporary sources of ambient impacts, or a visibility or increment analysis;

- (C) Seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject. The terms and conditions include the following:
 - (i) A federally-enforceable emissions cap assumed to avoid classification as a modification under any provision of Title I; and
 - (ii) An alternative emissions limit approved pursuant to regulations promulgated under § 112(i)(5) of the Act;
- (D) Are modifications under any provision of Title I of the Act, except those that qualify for processing as administrative permit amendments under §303.4(e); and
- (E) Do not qualify as administrative permit amendments under § 303.4(a) or minor permit modifications under § 303.5(b);

J. By amending § 303.10(a) to read as follows:

(a) After receiving a complete application for a permit, significant permit modification, or permit renewal, the Mayor shall, no later than sixty-one (61) days before the deadline for issuing a proposed permit, significant modification, or renewal for the Administrator's review, issue a draft permit and solicit comment from the applicant, from the affected States and from the public as follows:

- (1) The Mayor shall provide notice to the public by doing the following:
 - (A) Making available a public file containing a copy of all materials (including permit applications, compliance plans, permit monitoring and compliance certification reports, except for information entitled to confidential treatment under § 301.1(c)) that the applicant has submitted, a copy of the preliminary determination and draft permit or permit renewal, and a copy or summary of other materials, if any, considered in making the preliminary determination;
 - (B) Publishing in the *District of Columbia Register* a notice of the application, the preliminary determination, the location of the public file, the procedures for submitting written comments, the procedures for requesting a hearing if the Mayor has not scheduled a hearing, and the date, time, and location of the public hearing; and

- (C) Publishing any notice of a public hearing at least thirty (30) days in advance of the hearing.
 - (2) Copies of the notice required under § 303.10(a)(1)(B) shall be sent to the applicant, to the representatives of affected States designated by those states to receive the notices, and to persons on a mailing list developed by the Mayor, including those who request in writing to be on the list;
- K. By amending § 303.11 by striking subsection (c) in its entirety and amending subsection (a) to read as follows:
 - (a) No application for judicial review may be filed more than ninety (90) days following the final action on which the review is sought, unless:
 - (1) The grounds for review arose at a later time, in which case the application for review shall be filed within ninety (90) days of the date on which the grounds for review first arose and review shall be limited to the later-arising grounds; or
 - (2) The final action being challenged is the Mayor's failure to take final action, in which case an application for judicial review may be filed any time before the Mayor denies the permit or issues the final permit.
- L. By amending § 305.1 to read as follows:
 - 305.1 Owners or operators of Part 70 sources shall pay annual fees of twenty-five dollars (\$25) per year (as adjusted pursuant to the criteria set forth in § 305.2) times the total tons of actual emissions of each regulated pollutant (for presumptive fee calculation purposes) emitted from Part 70 sources.

II. Chapter 10 is amended by adding a new Section 1014 to read as follows:

1014 NO_x BUDGET TRADING PROGRAM FOR STATE IMPLEMENTATION PLANS

- 1014.1 The requirements of 40 CFR 96, Subparts A (NO_x Budget Trading Program General Provisions), B (Authorized Account Representative for NO_x Budget Sources), C (Permits), D (Compliance Certification), E (NO_x Allowance Allocations), F (NO_x Allowance Tracking System), G (NO_x Allowance Transfers), H (Monitoring and Reporting) and I (Individual Unit Opt-ins) and 40 CFR Part 97 Appendices A (Final Section 126 Rule: EGU Allocations, 2003-2007), B (Final Section 126 Rule: Non-EGU Allocations 2003-2007), C (Final Section 126 Rule: Trading Budget, 2003-2007) and D (Final Section 126 Rule: State Compliance Supplement Pool for the Section 126 Final Rule (Tons)), (July 1, 2000 Edition), are hereby adopted by reference with the terms used and defined.

1014.2 For the convenience of persons subject to the requirements of § 1014.1, Appendix No. 1 of this chapter contains pertinent parts of 40 CFR Parts 96 and 97.